

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUTHORISED DEPOSIT-TAKING INSTITUTIONS SUPERVISORY LEVY  
IMPOSITION BILL 1998**

**AUTHORISED NON-OPERATING HOLDING COMPANIES SUPERVISORY  
LEVY IMPOSITION BILL 1998**

**SUPERANNUATION SUPERVISORY LEVY IMPOSITION BILL 1998**

**RETIREMENT SAVINGS ACCOUNT PROVIDERS SUPERVISORY LEVY  
IMPOSITION BILL 1998**

**LIFE INSURANCE SUPERVISORY LEVY IMPOSITION BILL 1998**

**GENERAL INSURANCE SUPERVISORY LEVY IMPOSITION BILL 1998**

**FINANCIAL INSTITUTIONS SUPERVISORY LEVIES COLLECTION BILL 1998**

EXPLANATORY MEMORANDUM



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**1****Outline**

- 1.1 These Bills form part of a package of legislation to implement the Government's response to the recommendations of the Financial System Inquiry (FSI).
- 1.2 The purpose of these Bills is to impose a levy on those industries that will be prudentially regulated by the Australian Prudential Regulation Authority (APRA). These levies will fund APRA and the cost to the Australian Securities and Investments Commission (ASIC) of undertaking consumer protection functions for institutions in these industries.
- 1.3 The Bills allow for a levy to be charged on the entity being supervised according to a percentage of assets held by the entity, subject to a minimum and maximum levy amount. The Treasurer will determine the percentage, as well as the minima and the maxima. This will ensure that the levy paid by each entity more closely reflects the cost of supervision and the benefits of supervision to entities and their customers, than is presently the case.
- 1.4 The present regulatory authorities have separate funding mechanisms, with significant disparities in terms of the nature and level of funding. These funding disparities can act to create significant cost disadvantages between categories of financial institutions.
- 1.5 The aim is to establish an administratively simple and uniform funding scheme based on the principle of full cost recovery. The regime would involve charges for direct services provided (eg licensing) and an annual levy sufficient to cover the other costs of operations, which would, in broad terms, be determined on a pro-rata basis. It would be broadly similar in nature to the financial charges that building societies, credit unions, insurance companies and superannuation funds already pay. The banks at present are effectively 'charged' through interest forgone on non-callable deposits (NCDs) required to be held at the RBA.
- 1.6 With the exception of the banks, the net financial effect on the institutions will be small (some institutions may fare better and some worse, and existing cross subsidies will be removed). Banks will have to pay a levy, which they have not been required to do to date, but they will no longer forgo a much greater amount of interest income on NCDs.

1.7 The levies are technically considered to be taxes and as such separate levy imposition Bills have been drafted for each industry to be regulated. This will provide the flexibility to determine the levy on each industry according to the cost of regulating that industry.

1.8 A single Bill (the Financial Institutions Supervisory Levies Collection Bill) provides for the collection of the levies relating to each of the separate levy imposition Bills.

## Financial impact statement

1.9 There will be no net impact on the budget as levy receipts are fully appropriated for expenditure on regulatory purposes.

1.10 Under the new regulatory regime, institutional categories will pay a levy broadly in line with the cost of supervising that category. This will include the cost of APRA's prudential supervision and one-off establishment costs, and the cost of consumer regulation undertaken by ASIC.

## 2

### Abbreviations

The following abbreviations are used in this explanatory memorandum.

ADI	Authorised Deposit-taking institution
AFIC	Australian Financial Institutions Commission
APRA	Australian Prudential Regulation Authority
ASC	Australian Securities Commission
ASIC	Australian Securities and Investments Commission
FSAC	Financial Sector Advisory Council
FSI	Financial System Inquiry
ISC	Insurance and Superannuation Commission
NCDs	Non-callable deposits
NOHCs	Non-operating Holding Companies
RIS	Regulation Impact Statement
RBA	Reserve Bank of Australia
RSAs	Retirement Savings Accounts
SSAs	State Supervisory Authorities

**3****Regulation impact statement**

3.1 This statement relates to the funding regime for prudential regulation undertaken by APRA and the consumer protection functions undertaken by ASIC relating to prudentially regulated entities.

**Problem Identification and Regulatory Objective**

3.2 A new funding regime will be required to fund the above mentioned new regulators responsibilities. At present, the different regulatory authorities have separate funding mechanisms. There are also significant disparities between the nature and level of funding associated with them.

3.3 These funding disparities can act to create significant cost disadvantages for one category of financial institutions vis-a-vis another. This problem has taken on a greater significance with the emergence of financial conglomerates and the subsequent blurring of traditional institutional boundaries, which open the scope for regulatory arbitrage to minimise the fee burden.

3.4 The aim is to establish an administratively simple and uniform funding scheme, reflecting the principles of equity, efficiency and competitive neutrality, that is the scheme will not create a relative cost disadvantage to any one category of institutions covered.

3.5 The FSI recommended that regulatory agencies' charges should reflect their costs (Recommendation 104) and advised that, in the interests of equity and efficiency, the costs of financial regulation should be borne by those who benefit from it and that the agencies should not over-charge.

**Identification of Alternatives****BUDGET FUNDING****LEVY ON FINANCIAL INSTITUTIONS****Impact Analysis****Budget Funding**

3.6 Under this option there would be no charge made on the institutions being regulated to cover the cost of prudential regulation; funding would be through a normal appropriation from the budget. The cost to the budget, on the basis of current supervisory expenses of the relevant regulators, could be in the order of \$70 million per annum.

3.7 A perceived advantage of not imposing a charge on financial institutions is that direct costs to the financial system would be lowered but this would effectively represent a subsidy from the Commonwealth to the finance sector. Furthermore, such an approach would be a basic departure from the approach adopted to date and would not satisfy the principle of efficiency since there is no link between the intensity of supervision and the cost of providing it. Other considerations include that it might reduce the incentive for the industry to seek to have supervision carried out in a cost effective manner; and would subject the agency to the uncertainty associated with direct funding from the Commonwealth budget.

**Levy on Financial Institutions**

3.8 This would be based on the principle of full cost recovery from the institutions that are regulated. The regime would involve charges for direct services provided (for example licensing) and an annual levy sufficient to cover the other costs of operations, which would, in broad terms, be determined on a pro-rata basis. It would be broadly similar in nature to the financial charges that building societies, credit unions, insurance companies and superannuation funds already pay. The banks are effectively 'charged' through interest forgone on NCDs. The number of institutions likely to be affected by the changes are approximately: 165 general insurers; 51 life insurers; 4000 superannuation entities (not including excluded funds); and 49 banks.

3.9 With the exception of the banks, the net financial effect on the institutions will be negligible (although some institutions may fare better and some worse) and may well be positive because, as noted above, they are already subject to similar levies and a rationalised structure should lead to cost savings. In the case of banks, they will have to pay a levy, which they have not been required to do to date, but they will no longer forgo a much greater amount of interest income on NCDs.

3.10 The levy would ensure that the cost of regulation is met by those who benefit from it. The taxpayer would clearly be the beneficiary of this approach. It would also provide a greater degree of autonomy for the APRA as the arrangements covering the budget treatment of such user-based funding are much more predictable and assured than a general appropriation. This method of funding may also tend to encourage the institutions paying the levy to act as a constraint on empire building or other excessive cost increases on the part of the regulator. Finally, the level of the levy charged will require the approval of the Treasurer.

### Conclusion and Preferred Option

3.11 The use of a levy on financial institutions is consistent with current practice and would appear to meet the objectives identified. As such, it is considered to be the most appropriate means of funding APRA and consumer functions undertaken by ASIC relating to prudentially regulated activities.

### Consultation Process

3.12 The main consultation process was undertaken by the FSI. The FSI received a total of 421 submissions, including 153 submissions responding to a Discussion Paper published by the FSI in November 1996. These submissions were prepared by a broad cross-section of industry participants and other interested individuals, corporations and groups. The FSI held public consultations in all mainland capital cities during December 1996, and met with a range of financial industry experts and participants, regulatory agencies and consumers, both in Australia and overseas. The FSI also participated in a range of conferences and seminars, and had a home page on the Internet. At the time of the release of the FSI Final Report, the Treasurer announced that further industry consultation was unnecessary.

3.13 In the preparation of specific levy rates it is intended to consult with the Department of Finance and Administration, the affected regulators and key industry bodies.

3.14 State and Territory Government agreement is not necessary for the establishment of a prudential regime at the Commonwealth level which encompasses non-bank deposit taking institutions. However, State/Territory agreement would be required for full transfer of responsibility for building societies and credit unions to the Commonwealth sphere. Negotiation on the proposed transfer of responsibilities is to occur in a two-stage process with the first stage seeking in principle agreement. Stage two will require joint Commonwealth-State working parties to settle matters of policy and administrative detail necessary to implement the changes. Full implementation will be completed if possible by the end of 1998.

### Implementation and Review

3.15 The adoption of an objectives-based approach to regulation provides the flexibility necessary for regulation to remain relevant in a sector undergoing constant change. An important implication of a flexible regime is that it significantly reduces the need to establish, at the outset, a timetable for a formal review. For this reason, and in conjunction with the additional safeguards discussed below, no formal review is proposed for the immediate future. The level of the levy will, by necessity, be the subject of annual review and will require the Treasurer's approval for the rate set.

3.16 Various bodies will undertake ongoing review and assessment of the success and appropriateness of these regulatory arrangements.

(a) A Board will be responsible for ensuring that APRA performs in accordance with its charter, balancing efficiency, competition and stability objectives. It will be required to make regular, detailed public reports on its operations and sources and uses of funds, and will also be answerable to the Treasurer as the responsible Minister and would be subject to budget scrutiny. This will not only enhance the accountability of APRA, but will increase the degree of scrutiny on the effectiveness and continued relevance of its regulatory approach.

(b) The Treasury will continue to fulfil its role in advising the Treasurer on issues including the development, implementation and efficacy of policy in the financial sector.

(c) The Financial Sector Advisory Council (FSAC) will conduct a review of the regulatory framework five years after the commencement of these measures.

(d) The regulatory framework will also be reviewed ten years after the commencement of these measures as part of the Commonwealth's Legislative Review Schedule.

## Notes on clauses – Levy Imposition Bills

4.1 The Bills included in this part refer to those Bills which impose a levy on the industries to be supervised by APRA. The clauses in each of these Bills are consistent across each Bill, unless stated otherwise.

### Clause 1 – Short title

4.2 Upon enactment, these Bills will be known as the:

- *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*
- *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*
- *Superannuation Supervisory Levy Imposition Act 1998*
- *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*
- *Life Insurance Supervisory Levy Imposition Act 1998*
- *General Insurance Supervisory Levy Imposition Act 1998*

### Clause 2 – Commencement

4.3 The Bills relating to all entities, other than to ADIs, will commence when the Australian Prudential Regulation Authority Bill 1998 receives Royal Assent. A subclause is also included which provides for regulations to vary the date from which the levy should be paid if the Act commences after 1 July 1998. This will remove the possibility of a leviable entity paying a levy under both the existing arrangements and the proposed arrangements.

4.4 The Bill relating to ADIs is subject to a limit of 24 months after receipt of Royal Assent on any delay in proclaiming the Act. This additional time for proclamation is necessary as banking institutions are expected to be subject to the NCDs requirements during 1998-99 while other deposit-taking institutions are currently subject to State prudential arrangements and supervisory levies.

### Clause 3 – Act binds the Crown

4.5 The Bills bind the crown in each of its capacities.

### Clause 4 – External Territories

4.6 The Bills extends to every external Territory.

### Clause 5 – Interpretation

4.7 Those items which are not self-explanatory are outlined below.

4.8 Levy imposition day: This is the date from which the levy is calculated. If the entity is supervised by APRA at the start of the year of supervision, this date is 1 July. If the entity becomes supervised by APRA during the financial year, the levy is imposed from the date the entity becomes that type of entity.

4.9 Statutory upper limit: These amounts are the absolute maximum dollar amounts that an entity may be levied. The maximum that the Treasurer determines is payable by an entity in clause 7(1)(b) must not exceed this statutory upper limit.

### Clause 5 – Application of Act to Lloyd's (This clause is only included in the General Insurance Supervisory Levy Imposition Bill.)

4.10 This provision puts Lloyd's in the same position in terms of this Bill as other body corporates authorised under the *Insurance Act 1973*.

4.11 As this clause is only included in the General Insurance Supervisory Levy Imposition Bill, the following clauses in this Bill are numbered one digit higher than in the remaining levy imposition Bills.

### Clause 6 – Imposition

4.12 These Bills will impose levies on those entities regulated by APRA.

### Clause 7 – Amount of levy

4.13 The Bills relating to all entities, other than NOHCs, allow for a levy to be determined by the Treasurer as a percentage of the value of assets, subject to a minimum and maximum amount. The use of minimum and maximum amounts reflects the view that there is firstly a certain minimum cost incurred in regulating even the smallest institutions and secondly that beyond a certain size there is no extra cost in regulating an institution. The Treasurer may determine these amounts each year and determine different minimum and maximum levy amounts for each industry sector. The Treasurer will also be able to determine how the asset value of an entity is calculated.

4.14 The Bill relating to authorised NOHCs allows for the Treasurer to determine a levy within the statutory upper limit. This levy will be a flat amount rather than a percentage of the value of assets as these entities are not expected to hold significant assets in their own right (although they do indirectly through their holdings of shares in their operative subsidiaries), yet may warrant intensive supervision.

4.15 If an entity is only regulated for part of the financial year by APRA, the Bills allow for the levy to be determined according to the number of days the entity is regulated and provide for the basis of its calculation. In some cases this may involve a calculation based on the minimum levy amount pro rated for the number of days under supervision.

*Clause 8 – Calculation of indexation factor*

4.16 The statutory upper limits contained in each of the Bills are linked to the Consumer Price Index. This provision is designed to ensure that, if these Bills are enacted, the real value of these upper limits is maintained and thus the need for amendments to the legislation over time is minimised.

## 5

### Notes on clauses – Collection Bill

5.1 This Bill enables the collection of levies imposed by each of the levy imposition Bills.

#### Part 1 - Preliminary

*Clause 1 – Short title*

5.2 Upon enactment this Bill will be known as the *Financial Institutions Supervisory Levies Collection Act 1998*.

*Clause 2 – Commencement*

5.3 This Bill will commence at the same time as the Australian Prudential Regulation Authority Act 1998.

*Clause 3 – Act Binds the crown*

5.4 The crown will be bound in each of its capacities.

*Clause 4 – External Territories*

5.5 The Bill extends to every external Territory.

*Clause 5 – Application of Act to Lloyd's*

5.6 This provision puts Lloyd's in the same position in terms of this Act as other body corporates authorised under the *Insurance Act 1973*.

*Clause 6 - Interpretation*

5.7 Self explanatory



## Part 2 – Collection of levies other than levy under the Superannuation (Financial Assistance Funding) Levy Act 1993

### Clause 7 – Interpretation

5.8 Most of these items are self-explanatory.

5.9 Levy imposition day: This is the date from which the levy is calculated. If the entity is supervised by APRA at the start of the year of supervision, this date is 1 July. If the entity becomes supervised by APRA during the financial year, the levy is imposed from the date the entity becomes that type of entity.

### Clause 8 – Liability to levy

5.10 Entities that will be liable include those that are defined during the financial year as:

- Authorised Deposit-taking Institutions;
- Authorised NOHCs;
- Providers of RSAs;
- Non-excluded superannuation funds;
- Life insurers; and
- General insurers.

### Clause 9 – When levy due for payment

5.11 The levy payment is due from ADIs, NOHCs, providers of RSAs and insurance companies on 1 July of that financial year, or the first business day following 1 July. This deadline allows the entity 6 weeks to submit a statement of assets and liabilities as at 31 March of the preceding financial year and a further 6 weeks for calculation and payment of the levy.

5.12 The levy payment due from non-excluded superannuation funds is based on assets data included in their annual return as these entities are not required to provide quarterly assets data. Annual returns will be due to APRA 4 months after the funds balance date, which for the majority of funds is 30 June. These entities have been given a longer period to provide assets data due to the greater complexity of annual returns vis-a-vis quarterly returns. Trustees will then have 6 weeks after lodgement of the annual return to pay the levy relating to that financial year.

5.13 If an entity becomes supervised by APRA part way through the financial year, the entity has 6 weeks to pay the levy after the date the entity became supervised by APRA.

### Clause 10 – Late payment penalty

5.14 Entities that pay their levies after the deadline for payment (as defined in clause 9) are liable for a penalty. This penalty is calculated on the number of days the unpaid amount is overdue, at a rate of 20% per annum.

### Clause 11 – Payment of levy and late payment penalty

5.15 Payments are to be made payable to APRA on behalf of the Commonwealth.

### Clause 12 – Waiver of levy and late payment penalty

5.16 APRA will have the power to waive the levy and/or late payment penalty on behalf of the Commonwealth, if it considers appropriate. For example, APRA may waive payment of the levy by an insurance entity if it is satisfied that this payment would prevent payment in full of claims under contracts of insurance made with the body corporate.

### Clause 13 – Recovery of levy and late payment penalty

5.17 This clause provides for the collection of the levy and late payment penalty. All late payments and levies imposed are debts due to the Commonwealth.

### Clause 14 – Exempting laws ineffective

5.18 This will ensure that this Bill overrides any existing legislation and cannot be inadvertently overridden by any future legislation.

### Clause 15 – Regulations may modify this Part if levy Act commences during a financial year

5.19 This clause allows for regulations to determine the date from which the levy should be paid. This will remove the possibility of a leviable entity paying a levy under both the existing arrangements and the proposed arrangements.

### Part 3 – Collection of Levy Under the Superannuation (Financial Assistance Funding) Levy Act 1993

5.20 This Part has been transferred in full from the *Superannuation Entities (Taxation) Act 1987*. Transfer of this Part ensures that collection of levies administered by APRA are provided for under a single Act.

### Part 4 – Miscellaneous

#### *Clause 27 – Review of certain decisions*

5.21 Entities supervised by APRA may request APRA to reconsider reviewable decisions. Clause 27 sets out the process for a review including the:

- time in which the request for review must be made;
- period in which APRA must reconsider the decision; and
- procedure for review by the Administrative Appeals Tribunal.

#### *Clause 28 – Statements to accompany notification of decisions*

5.22 This clause states the procedure which APRA must follow when the reviewable decision has been made. This includes notifying the entity that, subject to the *Administrative Appeals Tribunal Act 1975*, the entity can apply to the Administrative Appeals Tribunal for review.

#### *Clause 29 - Regulations*

5.23 This clause allows for the Governor General to make regulations which are required or permitted by the Act, or necessary or convenient to be prescribed for carrying out of the Act.

1996–97–98

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

### Authorised Deposit-taking Institutions Supervisory Levy Imposition Bill 1998

#### *Schedule of the request by the Senate for an amendment*

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- (1) Clause 7, page 4 (lines 21 to 26), omit paragraphs (5)(a) and (b), substitute:
- (a) if the ADI was an ADI at all times from and including 17 March of the previous financial year to and including the following 30 June—a day in the period from and including that 17 March to and including the following 14 April; or
  - (b) if the ADI was not an ADI at all times from and including 17 March of the previous financial year to and including the following 30 June—the day after that 17 March when the ADI became, or becomes, an ADI.

HARRY EVANS  
Clerk of the Senate

The Senate  
29 May 1998